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May 31, 2023

VIA ECF

Honorable Gregory H. Woods
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Zivkovic v. Valbella at the Park, LLC,*
No.: 22 CV 7344 (GHW)

Dear Judge Woods,

We represent Plaintiff in the above-referenced matter. We write, in accordance with section 1.E of the Court's individual practices, to (1) request a fifteen-day extension of the discovery deadline, from June 15, 2023 to June 30, 2023, and (2) to request permission to file a motion to enforce a Fed. R. Civ. P. Rule 45 subpoena that Plaintiff served on third-party 10 Tier LLC for which we have not received any response.

I. Request to Extend the Discovery Deadline

Plaintiffs respectfully request that the Court extend the discovery deadline from June 15, 2023 to June 30, 2023. The reason for this request is that Plaintiff served a second request for the production of documents on Defendant last week (less than 30 days before the current discovery deadline) and we would like to ensure that Defendant fully responds prior to the discovery cutoff. The just-served document requests seek email communications from and/or to Defendant's employees' company accounts relating to the opening of the new Valbella restaurant. (A copy of these requests is attached hereto as "Exhibit A.").

Plaintiffs served these new document demands at this juncture of the case for three reasons. First, Defendant's Rule 30(b)(6) witness, testified that Defendant had informed customers, in writing, of the opening of the new Valbella restaurant. While these communications should have been produced in response to Plaintiff's initial document demands, no documents have been provided.

Second, Defendants Rule 30(b)(6) witness testified that the landing page of an early iteration of Defendant's web site, valbellaatthepark.com, stated "hiring for all positions" followed by the email address "valbella@valbellamidtown.com" and the phone number "212.888.8955" which was the email address and phone number used by Valbella Midtown. The witness also confirmed that (1) communications relating to the public content of Defendant's web site were sent to Defendant's web developers via email, and (2) not all emails between Defendant's representatives and the web developers relating to the opening of Valbella at the Park's website have been produced.

Finally, the new requests were served because, in discovery, we learned that Valbella at the Park uses the *exact same* customer service email account, valbella@valbellanyc.com, as the customer service account that was used to communicate with customers by its alleged predecessor Valbella Midtown. Given this discovery, the just served document demands were tailored to seek emails sent to and/or from "@valbellanyc.com" email account relating to the opening of Valbella at the Park.

For all the foregoing reasons, we respectfully request that the Court grant this short adjournment. This is the parties' third request for an adjournment of this deadline and Defendant consents to this request.

II. Request for Leave to File Motion to Enforce Without Conference

On April 24, 2023, Plaintiff served a subpoena to produce documents on Defendant's web developer 10 Tier LLC whereby responsive documents due to be produced by May 9, 2023. The web developer did not produce documents by that date. Accordingly, we contacted the 10 Tier representative with whom Valbella at the Park corresponded relating to the maintenance of their web site, Ginutis Sipas. Mr. Sipas informed us that, while he had already compiled and prepared all the documents for production, he had since been contacted by counsel for Defendant, Fred Seeman, who told him to withhold production and that Mr. Sipas was following Mr. Seeman's instructions. We informed Mr. Sipas that absent a motion to quash, Mr. Seeman could not stop him from responding to the subpoena, however, Mr. Sipas informed us that he will not comply with the subpoena. Accordingly, we respectfully request permission to file a motion to enforce the subpoena and respectfully request that the Court waive its pre-motion conference requirement for motions for discovery.

We thank the Court for its attention to this matter.

Respectfully submitted,

JOSEPH & KIRSCHENBAUM LLP

s/ Josef Nussbaum

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cc: All Counsel of Record (via ECF)